

State of New Hampshire



PERSONNEL APPEALS BOARD

54 Regional Drive, Unit 5
Concord, New Hampshire 03301

STATE OF NEW HAMPSHIRE

PERSONNEL APPEALS BOARD

APPEAL OF MICHELLE MONTVILLE

DOCKET # 2020-T-012

ORDER ON APPELLANT'S MOTION FOR REHEARING

The Board issued its decision on May 5, 2021 upholding the Department of Safety's non-disciplinary termination of the Appellant's employment, based on the then-indeterminate nature of the Appellant's recovery from a serious medical condition which rendered her unfit for duty. The Appellant filed a timely Motion for Rehearing and the Department of Safety filed a timely Objection.

At its meeting on July 12, 2021, the Board considered the arguments made by both parties within the context of Per-A 207.12 (d) and Per 1003.01 – .04. The Board concluded that the Appellant's motion presented no new evidence that was not available at the time of the hearing on the merits, that it did not demonstrate any misapplication or misinterpretation of the applicable law or rules and that it did not demonstrate that the Board's decision on the merits as issued on May 5, 2021 was contrary to controlling law. The Appellant's Motion essentially restated the facts and legal arguments that were made at the opening and conclusion of the hearing and asked the Board to draw a different conclusion with respect to the disciplinary basis of her termination but the Board found no basis for doing that.

The caselaw cited by the Appellant relative to "after-acquired evidence" is clearly distinguishable and not applicable to the facts of this case. At the time the Department of Safety made its non-disciplinary termination decision, the information it had in its possession indicated that the Appellant's medical condition was likely to "lifelong" and the likelihood of her being able to return to duty was still "indeterminate" per her treating physicians most

recent assessments. The Board is aware that the Appellant made a full recovery and was able to return to a fitness level sufficient to allow her to return to work as a police officer within a few months of the State's termination decision.

However, the relevant inquiry is whether the Department of Safety's decision was based on an incorrect interpretation or unlawful application of the personnel rules governing non-disciplinary dismissals. It is the Appellant's burden to demonstrate that an incorrect interpretation or unlawful application of the rules, *at the time the decision was made*, led to a legally unjustifiable result. On the facts presented, the Appellant failed to meet her burden. Based on the information then available to the Department of Safety, the decision to terminate the Appellant's employment was legally permissible even if, with the benefit of hindsight, it later seemed like an untimely determination. The Department's decision must be therefore be upheld on Appeal.

ORDER

Based on the foregoing analysis the Board enters the following order:

THE APPELLANT'S MOTION FOR REHEARING IS DENIED

For the Board:



Jason R.L. Major, Esq.
PAB Board Member

July 21, 2021